IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 7TH JUNE 2007 / 17TH JYAISHTA 1929

**WA.No. 54 of 2007()**
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**AGAINST THE ORDER IN RP.1028/2006 Dated 12/12/2006**
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APPELLANTS/APPELLANTS 1 AND 2 IN REVIEW PETITION/
RESPONDENTS 1 & 2 IN WPC
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1. STATE OF KERALA REP. BY THE
PRINCIPAL SECRETARY TO GOVERNMENT,
GENERAL ADMINISTRATION DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM.

2. THE DISTRICT COLLECTOR,
ALAPPUZHA.

BY ADVOCATE GENERAL SHRI C.P. SUDHAKARA PRASAD
BY GOVERNMENT PLEADER SHRI T.G. SUNIL.

RESPONDENT/ RESPONDENT IN REVIEW PETITION/PETITIONER IN WPC
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SAVITHRI, W/O.N.BHASKARAN,
KALARIKAL VELI,NORTH ARYAD P.O.,
ALAPPUZHA.

BY ADV. SRI.J.OM PRAKASH

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 07/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**H.L. DATTU, C.J. & K.T. SANKARAN, J.**

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**W.A. No. 54 OF 2007**

.....

**Dated this the 7th June, 2007**

**J U D G M E N T**

**H.L. Dattu, C.J.:**

While the petitioner's husband was alive he had filed an application on 19.07.1981 inter alia requesting the respondents to grant him pension under Freedom Fighters Pension Scheme of the State Government. That application came to be rejected by a responsible officer. Thereafter, the petitioner's husband had filed a representation before the Honourable Chief Minister of the State. Even there also, the petitioner's husband did not get any relief. Aggrieved by the action and inaction, omission and commission committed by the respondents, the petitioner's husband was before this Court in O.P. 6944 of 2003. The learned single Judge, taking a very sympathetic view of the matter, by his judgment dated 19.02.2004, directed the respondents to consider the claim of the petitioner. While disposing of the Original Petition, this Court had also observed that the respondents shall consider the case of the petitioner in accordance with law, keeping in view of the documents, which are available in the records, produced by the petitioner. After the disposal of the Original Petition, once again the State

Government had passed an order dated 17.09.2004. In that, a reference was made by them to the circular instruction issued by the State Government on 31.12.1993. Nowhere in the order, they have referred to the documents produced by the petitioner such as Ext.P5 to P8and other certificates said to have been issued by the persons who had the knowledge of petitioner's husband's involvement in the freedom movement.

2. In fact, the respondents have taken note of production of several certificates by the petitioner along with his application. But they have not made any comments on those certificates. The net result is rejection of the petitioner's application, which necessitated the petitioner to approach this court once again in W.P.(C) 31822 of 2004. The learned single Judge, being of the opinion that the petitioner is driven from pillar to the post, has issued a positive direction to the respondents to grant the Freedom Fighters' Pension to the petitioner. The State was not satisfied with this order. Therefore, they had filed a Review Petition before this Court, inter alia requesting the learned single Judge to review the said order. The said Review Petition is also rejected with certain observations and modifications. The State, once again, is questioning the original order as well as the order passed in the Review Petition by the learned single Judge, in this Writ Appeal.

3. Learned Advocate General vehemently contended before this Court that the learned single Judge ought not to have allowed the Writ Petition and further, ought not to have issued a positive direction to the State Government to grant pension to the petitioner . In aid of his submission, the learned Advocate General takes us through the impugned order passed by the State Government and also through the circular instruction issued by the State Government for grant of Freedom Fighters' Pension.

4. Per contra, learned counsel appearing for the respondent herein sought to justify the impugned order.

5. This litigation is pending for more than three decades. Petitioner's husband has already made his journey to celestial world. He did not see any result on his claim while he was alive . After his death, his wife has stepped in. Even that poor lady is not in a position to get a favourable order.

6. The learned single Judge, while disposing of the Original Petition No.6944 of 2003 had specifically directed the respondents to consider the applications filed by the petitioner dated 19.07.1981 with reference to the personal knowledge certificates by persons who were aware of the active participation of the petitioner's husband in the freedom struggle such as Exts. P5 to P8. The State Government while considering the request of the petitioner,

though has referred to those certificates, but has neither rejected those certificates nor acted upon those certificates. They had only placed reliance on the circular instruction issued by the Government on 31.12.1993, wherein it is stated that if a person wants to claim pension under the Freedom Fighters' Pension Scheme, he has to produce documentary evidence such as warrant of arrest , court record, jail record etc . and since the petitioner had failed to produce those documents along with his application, he is not entitled to get the relief claimed in his application. In fact, to say the least, the State Government, while considering the application of the petitioner ought to have taken into consideration the observations made by this Court and also ought to have referred and considered the certificates, Exts.P5 to P8. Such an exercise has not been done in the instant case. Therefore, in our opinion, the orders passed by the State Government dated 17.09.2004 requires to be set aside and a direction requires to be issued to the State Government to re-consider the petitioner's application in the light of the orders and directions issued by this Court in O.P. 6944 of 2003. Since the matter is pending before the State Government for the last few decades, we issue a positive direction to the State Government to re-consider the petitioner's application as expeditiously as possible, at any rate within three months from the date of receipt of a copy of this judgment.

7. We only hope and desire that the State Government, at least now, will consider the application of the petitioner sympathetically and give what is due to her. In view of the above, orders passed by the learned single Judge in W.P.(C ) 31822 of 2004 and the orders passed in Review Petition No.1028 of 2006 require to be set aside and they are set aside and the Writ Appeal is disposed of.

Ordered accordingly.

**H.L. DATTU,**
**CHIEF JUSTICE.**

**K.T. SANKARAN,**
**JUDGE.**

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